

---

# The Elements of a Crime

---

A crime occurs when an individual breaks one of our criminal laws. **Every crime has two essential parts:** the physical action or actus reus and the intent or mens rea (guilty mind). For example, the crime of arson has two parts: actually setting fire to a building and doing it wilfully and deliberately. Setting a fire by accident may not be a crime. For most criminal cases both the actus reus and the mens rea must be proven. If either element is missing, then no crime has been committed.

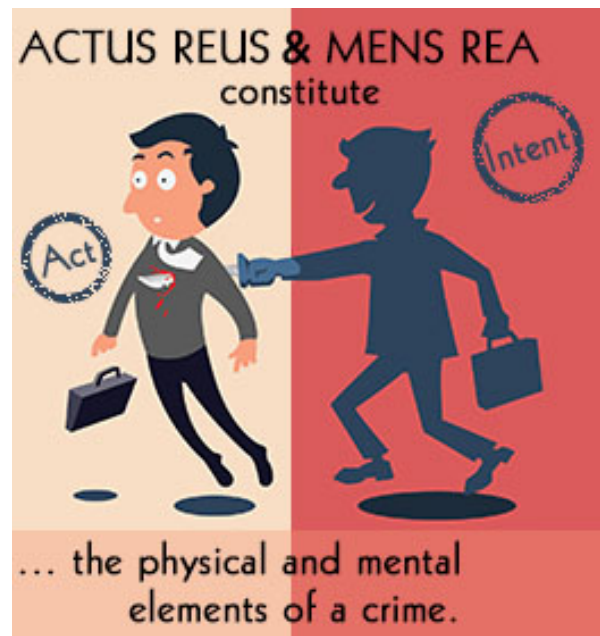
## Actus reus

The physical act of committing an offence (actus reus) is more than an act, it can be an omission to act or a 'state of being'. For example if one is in possession of an illegal narcotic, one is not acting or failing to act but merely in possession. This is a state of being. Omissions to act can also be crimes (a failure to act when required to do so by law).

If a parent fails to provide the basic necessities for children's survival the failure to provide is an omission and a crime. The majority of crimes are acts or kinds of misconduct. Proof of the physical element requires more than simply determining an act, omission or state of being exists. It is necessary to consider the four C's-conduct, consequences, circumstances and causation.

The conduct must be as described earlier an act, omission to act or a state of being as outlined in a specific section of the criminal charge. Of particular importance to the concept of conduct is that it be voluntary. The law will not hold someone criminally responsible for an involuntary act. Consequences refer to the outcome of a specific act. For a homicide the consequence would be the death of a human being.

The circumstances aspect of the actus reus refers to the relevant circumstances under which an act must occur to be criminal. In the case of the crime of trespassing at night the relevant



---

circumstances would be that the act occurred at night, on someone's property other than your own and that you entered the property without consent or lawful excuse.

The final element is causation, meaning that the conduct of the accused person must be shown to have caused the consequence (the criminal act) to occur. If Sally is charged with murdering Bill then it must be proven that Sally's conduct caused the death of Bill.

## **Mens rea**

The physical act represents one element in the commission of a criminal act while the guilty mind represents the second key element. **The guilty mind refers to the intention, knowledge or recklessness of the accused.** Essentially the law states that we must mean to cause a wrongful consequence.

Intention is commonly used in the Criminal Code to establish a type of guilty mind. Words like 'willfully,' 'means to' or 'intentionally' are used to describe a state of mind. There are two basic types of intention-specific and general. Specific intent offences frequently use the phrase 'with intent' or 'for the purpose of' to demonstrate a specific purpose behind the crime. General intent crimes are those that do not require a further purpose or intention and are often crimes committed in moments of uncontrolled passion or aggression.

The knowledge form of a guilty mind means that the accused must have knowledge of the specific circumstances of the crime. The phrases 'knowingly' or 'knowing' are commonly used here to indicate a specific type of knowledge. For example, to knowingly lie to a judge or jury is called perjury and is a criminal offence but to give false evidence unknowingly is not a criminal offence.

The third kind of intent is recklessness. This is type of intent is found in crimes like dangerous driving causing death. It means that the accused has been unduly careless in their actions by not exercising good judgment and foresight. If one drives 100km/h through a school zone in the daytime, with no intention of killing or harming a child, and hits a child crossing the street and that child dies, the law would use recklessness to establish the guilty mind. Contrary to TV law, it is not necessary for the Crown to establish why an accused has committed an offence (the motive). Motive may be used to establish intention and can be used in sentencing to mitigate or aggravate the sentence depending on the reason for committing the crime.

## **Other Elements of Crime**

If an accused had a reason to commit the offence, it is called his or her motive. Have a motive does not mean that you are guilty; many of us have motives to commit crimes, but never do. Suppose a married woman who was having an affair was killed in a suspicious fire. Her

---

husband may have had motive to kill her, but unless it can be shown that he had caused the fire, he has not committed an offence.

In addition to the physical act and guilty mind the criminal law also ascribes guilt in specific circumstances to incomplete offences and to those who are less than full participants in the offence. **A crime is considered attempted if it can be established that there was intention, that some act toward committing the offence occurred and that the offence did not reach full completion.**

**Anyone that helps, aids, or assists before, during or after the commission of an offence is a party to that crime and can be charged under the Criminal Code as though they had actually committed the offence.** Aiding or assisting someone that you know to have committed a crime is also a separate offence in Canada. Where people form an intention and common purpose to carry out an unlawful act and any one of them commits a crime in carrying out the common purpose, each person who knew that the criminal act was a likely consequence of the common purpose is also a party to that crime. **Agreeing with one or more people to commit an offence is a conspiracy and is a crime in Canada. Therefore if you plan to commit a crime, even if you do not complete the act, it is a crime. Counselling others to commit an offence is also unlawful.**

## Parties to an Offence

**Aiding or Abetting** - if you help someone commit a crime, you are guilty of aiding that person. If you encourage a person to commit a crime, you are guilty of abetting that person.

**Accessory after the Fact** - if you knowingly help a person escape or hide from police after a crime, you are an accessory after the fact.

**Organized Crime** - a group of 3 or more people who share common identity. This could be a group of Scouts, members of a football team, or Facebook friends. As soon as a group defines itself by opposing authority and engaging in ongoing criminal activity, the group becomes a criminal organization.

---

## Criminal Case Studies

Look at the case studies below and answer the questions posed with respect to the key criminal elements covered above (e.g. mens rea, actus reus, party to an offence).

### Case 1

Marion asked Sarah to take care of her infant boy for a few days. Marion also asked Sarah to give the infant a teaspoonful of “medicine” every night. In fact, the medicine was poison. Sarah did not think that the infant needed medicine so she did not give it to him. She put the medicine on a shelf in her living room. Later, Sarah’s five-year-old son gave the infant a large dose of the ‘medicine’ and the infant died. Marion was charged with murder.

Is Sarah or Marion guilty of murder? Explain.

---

---

---

---

---

---

---

### Case 2

Eva, Donna, and Claudia are walking through the park when they see their enemy Jim walking with a friend. They decide to “have some fun.” So Donna and Claudia hold back Jim’s friend while Eva punches and kicks him. Donna and Claudia laugh and yell their support to Eva. Meanwhile Mike, who is walking his dog, stops for a moment to see what is going on. Mike decides not to get involved and walks on. Eva is convicted of assault causing bodily harm.

Should Donna or Claudia be charged with an offence? Explain.

---

---

---

---

---

---

What about Mike? Explain.

---

---

---

---

---

---

### Case 1

Marion asked Sarah to take care of her infant boy for a few days. Marion also asked Sarah to give the infant a teaspoonful of “medicine” every night. In fact, the medicine was poison. Sarah did not think that the infant needed medicine so she did not give it to him. She put the medicine on a shelf in her living room. Later, Sarah’s five-year-old son gave the infant a large dose of the ‘medicine’ and the infant died. Marion was charged with murder.

Is Sarah or Marion guilty of murder? Explain.

*Sarah would not be guilty of any crime because 1) she did not cause the death of the infant 2) she had no knowledge of the poison in the bottle 3) she did not give the infant the poison. Marion could be found guilty of murder if the Crown could prove she knowingly put poison in the medicine bottle and could reasonably have expected it would be given to the infant boy and that he would die.*

### Case 2

Eva, Donna, and Claudia are walking through the park when they see their enemy Jim walking with a friend. They decide to “have some fun.” So Donna and Claudia hold back Jim’s friend while Eva punches and kicks him. Donna and Claudia laugh and yell their support to Eva. Meanwhile Mike, who is walking his dog, stops for a moment to see what is going on. Mike decides not to get involved and walks on. Eva is convicted of assault causing bodily harm.

Should Donna or Claudia be charged with an offence? Explain.

*Donna, Eva, and Claudia are parties to an assault causing bodily harm. They formed an intention in common to hurt (assuming that is what “have some fun” meant) Jim and to assist each other to do so. Donna and Claudia also assisted Eva by holding back Jim’s friend to allow her to punch and kick Jim, which also makes them parties to the assault. Their “yelling support” indicates their awareness that the assault was an anticipated part of the plan to “have some fun”, as well as their awareness that what they were doing assisted Eva.*

---

What about Mike? Explain.

*It is not a criminal offence in Canada to observe a criminal act and do nothing, though most Canadians would find it repugnant.*